

REMARKS

Claims 1-39 are pending in this application and have been amended as indicated above.

Claims 7 and 37-39 have been amended as indicated above for the reasons described herein.

Double Patenting

The Office has rejected the claims 1-39 under the doctrine of obviousness-type double patenting over the claims of U.S. Patent No. 6,586,110 and two co-pending applications. Applicant respectfully traverses this rejection for the reasons of record. However, *solely* in an effort to expedite prosecution, Applicant filed on August 4, 2004, a terminal disclaimer to obviate these double patenting rejections.<sup>1</sup>

Accordingly, Applicant respectfully requests withdrawal of these grounds of rejection.

Rejection – 35 U.S.C. § 102(b) over Layte

The Office has rejected claims 7, 10-13, 15, 17, and 36-39 under 35 U.S.C. § 102 (b) as being anticipated by Layte (U.S. Patent No. 2,816,665), for the reasons listed on pages 7-8 of the Office Action. Applicant respectfully traverses this rejection.

As amended, the rejected claims contain one of two limitations: that the structural member contains an intermediate layer with a honeycomb core structure and/or that the structural member has a substantially non-straight longitudinal shape. The Office, however, has not

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<sup>1</sup> A copy of that terminal disclaimer is attached hereto as Appendix A.

substantiated that Layte anticipates claims either of these limitations. In particular, the Office has not shown that Layte teaches a structural member that is substantially non-straight in the longitudinal direction. Indeed, based on the Office's admission in paragraph 9 of the Office Action, it seems that the Office recognizes that Layte does not teach or disclose such a limitation.<sup>2</sup>

As well, it would appear that the Office recognizes that Layte does not teach or suggest a structural member with an intermediate layer having a honeycomb core structure. In the Office Action, the Office did not reject claims over Layte that already contained this limitation. Applicant note that claim 36 contains such a limitation, but was rejected anyway. The undersigned assumes that this was merely an oversight by the Office.

In any event, it is unlikely that the Office can show that the rejected claims would have been obvious over Layte. Layte forms a structural member (i.e., a filter element) using a metal sheet 11 that contains a pattern of ribs 17 and slots 16. *See column 2, lines 12-41.* The ribs 17 and slots 16 have a very specific purpose during forming and operating the filter element. *See column 3, lines 47 through column 4, line 11.* Thus, this skilled artisan would have had no motivation to modify the pattern of ribs and slots disclosed by Layte.

The Office notes that Layte does not disclose the same process steps, but argues that since there are substantially similar products, the burden of proof is shifted to Applicant to show that the claimed product is patentably distinct. As noted above, the products are not substantially

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<sup>2</sup> The Office actually noted that the article of Layte is "not" straight in Figure 5. Based on Figure 5 and the remainder of the text in paragraph 9, the undersigned assumes that the Office intended to state the article in Figure 5 is straight.

similar: the claimed structural member contains a honeycomb core intermediate section and/or a substantially non-straight longitudinal shape.

For the above reasons, the Office has not substantiated that Layte anticipates the rejected claims. Accordingly, Applicant requests withdrawal of this ground of rejection.

CONCLUSION

For the above reasons, Applicant respectfully requests the Office to withdraw the above grounds of rejection and allow the pending claims.

If there is any fee due in connection with the filing of this Amendment, including a fee for any extension of time not accounted for above, please charge the fee to our Deposit Account No. 50-0843.

Respectfully Submitted,

By \_\_\_\_\_

  
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